

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Correa Analyst: Marion Mann DeJong Bill Number: AB 2449
Related Bills: See Legislative History Telephone: 845-6979 Introduced Date: 02/21/2002
Attorney: Patrick Kusiak Sponsor: Professional Beauty Fed. of CA

SUBJECT: Beauty & Barbering Businesses File Quarterly Reports Regarding Booth Renters & Independent Contractors

SUMMARY

This bill would require owners of beauty or barbering businesses to file reports with the Franchise Tax Board (FTB) providing information about people working in their businesses.

This bill would also add rules regarding licensing and public disclosure of certain information for those who own or work in beauty or barbering businesses. These changes are not discussed in this analysis since they do not impact the programs administered by FTB.

PURPOSE OF THE BILL

According to the author's staff, the purpose for the quarterly reporting requirement proposed by this bill is to ensure that individuals renting a booth in a beauty or barbering business are filing income tax returns and paying taxes.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2003, and operative for reports required to be filed after that date.

POSITION

Pending.

Summary of Suggested Amendments

Amendments are needed either to assign the administration of the quarterly reporting requirement proposed by this bill to another agency or to resolve the implementation concerns discussed in this analysis. See "Implementation Considerations" below.

ANALYSIS

FEDERAL/STATE LAW

Existing federal and state laws impose tax on the income earned by individuals, estates, trusts, and certain business entities and require the filing of an income tax return if certain income thresholds are met.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Gerald H. Goldberg

04/12/02

For California, tax is imposed on the entire taxable income of residents and upon the taxable income of nonresidents derived from sources within California. The tax for individuals is computed on a graduated scale at rates ranging from 1% to 9.3%. California taxpayers are required to file an income tax return if they are:

1. single, married (but filing a separate return), head of household, or qualifying widow or widower and have an adjusted gross income in excess of \$9,521 or gross income of \$11,901; or
2. married and filing a joint return and have a combined adjusted gross income of \$19,042 or gross income of \$23,803.

These amounts apply for the 2001 year and are indexed annually for inflation.

Under federal and state laws, employers are responsible for reporting wages paid to their employees and withholding and depositing income tax and disability insurance. For federal purposes employers report the wages and remit the withheld amounts to the Internal Revenue Service (IRS). For state purposes, employers report and remit the same information to the Employment Development Department (EDD).

Current state law also requires certain business or government entities to report specific information to EDD regarding any independent contractor that provides services to the business or entity.

THIS BILL

Under the Business and Professions Code, this bill would require owners of beauty or barbering businesses to file quarterly reports with FTB. The reports would disclose the name and Bureau of Barbering and Cosmetology license number of each booth renter or independent contractor working in the owner's facility.

"Booth renters" would include anyone performing barbering, cosmetology, electrolysis, nail care, or skin care as an independent contractor. "Independent contractor" would refer to anyone working in the beauty or barbering industry as an independent contractor performing services, including barbering, cosmetology, electrolysis, nail care, or skin care.

Failure to file a quarterly report or omitting a booth renter or independent contractor from the report would result in any undisclosed booth renters or independent contractors being considered an employee of the owner for the quarter covered by the report.

This bill would give FTB the authority to charge a fee to cover costs associated with enforcement of the quarterly reporting requirement and establish fines for noncompliance.

IMPLEMENTATION CONSIDERATIONS

Since undisclosed booth renters or independent contractors would be considered employees of the owner, it appears that owners would be responsible for reporting wages to EDD and be responsible for withholding and depositing income, unemployment, and disability insurance taxes for these individuals. Thus, it may be more appropriate for EDD to administer the quarterly reporting proposed by this bill.

In addition, EDD currently administers a similar reporting program for certain independent contractors and may be better equipped to expand that existing program to accommodate this proposal rather than assigning this responsibility to FTB. According to the author's staff, the author is considering amending the bill to either eliminate the quarterly reporting requirement or to make EDD responsible for administering the quarterly reports.

If FTB remains responsible for administering the quarterly reporting requirement proposed by this bill, the department would need to create a new system for processing, tracking, and enforcing the reporting requirement. Department staff has identified the following implementation considerations for purposes of a high level discussion; additional concerns may be identified as the bill moves through the legislative process.

- This bill does not include an appropriation to cover the costs of developing a system for processing, tracking, and enforcing the reporting requirement. Without an appropriation the department would be required to redirect resources from revenue producing activities to implement this bill.
- The bill does not specify (1) what should be done with the information provided on the quarterly report, (2) a deadline for filing the quarterly reports, and (3) what the penalties are for failure to file the report or disclose booth renters or independent contractors. To ensure the bill is administered as the author intends, the bill should be amended to specify what should be done with the information, when reports are due, and what penalties apply for noncompliance.
- The definition of "independent contractor" is circular; it uses the term independent contractor within the definition. Unclear terms can lead to disputes between taxpayers and the department.

LEGISLATIVE HISTORY

SB 1182 (Haynes, 1995/1996) would have required any person leasing a cosmetology booth or space within a beauty or barbering business to be licensed and to provide proof of liability and malpractice insurance. The bill also would have required the Board of Barbering and Cosmetology to report to FTB and IRS the name of any person, firm or corporation obtaining such a license. SB 1182 was never heard in committee and eventually died because it failed to pass to the second house by the constitutional deadline.

OTHER STATES' INFORMATION

It could not be determined if *Illinois, Massachusetts, Michigan, Minnesota, and New York* laws require quarterly reporting by beauty or barbering businesses similar to the reporting requirement proposed by this bill. The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

FISCAL IMPACT

The department's costs to administer this bill cannot be determined at this time but are anticipated to be significant because the department would be required to develop a new system to process, track, and enforce the quarterly reports.

ECONOMIC IMPACT

Revenue Estimate

Any improvements to self-assessed tax reporting or departmental collection action (tax or non-tax) that may result from this reporting requirement are conjectural.

ARGUMENTS/POLICY CONCERNS

Although this bill may provide FTB with an additional resource to verify compliance with income tax laws, it is unlikely that this bill would achieve the author's goals of improving the compliance rate of individuals renting space in a beauty or barbering business. Currently, the department uses Bureau of Barbering and Cosmetology license numbers in the department's compliance program. Individuals with licenses who do not file an income tax return are sent a notice asking them to either file a return or explain why they are not required to file a return. This bill would simply add verification that someone with a license was actually earning income with that license.

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